In the High Court of Judicature at Madras

Dated: 21/10/2003

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The Honourable Mr.Justice A.K.RAJAN

Writ Petition No.13637 of 2000

K.Govindan ... Petitioner

-Vs-

1. State of Tamil Nadu
by its Secretary to Government
School Education Department
Secrtariat
Chennai.9.

2. Director of School Education
Chennai.6.

3. Neelambal Subramaniam Higher
Secondary School
rep.by its Correspondent
Old Suramangalam
Salem.5. ..... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issue of a writ of Certiorarified Mandamus as stated therein.

!For petitioner : Mr.C.Selvaraju

For respondents : Mr.R.Vijayakumar GA
for RR1 and 2

:O R D E R

The petitioner filed the above writ petition praying to issue a writ of Certiorarified Mandamus to call for the records pertaining to te order passed by the Government in G.O.Ms.No.1170, Educ ation, Science & Technology Department, dated 20.12.199, quash the paragraph 4(ii) alone, and direct the respondents to sanction one set of incentive increment to the petitioner for M.Phil., qualification with all the consequential benefits.

2. The facts that are necessary for the disposal of the writ petition is as follows:

The petitioner joined as P.G.Assistant on 12.10.1978 in the third respondent school; he passed M.Ed., in April, 1983 and M.Phil.,on 20.12 .1993.

As per the scheme introduced by the Government, if any teacher requires higher qualification over and above the minimum required qualification for the post in question, he is entitled for two incentive increments for higher qualification. The scheme was introduced as early as in 1969 itself for the teachers working in Elementary/ Middle school and High School. The Higher Secondary system was started only in 1978 and separate service rules were framed governing the staff working in the Higher Secondary School. The minimum educational qualification for the post of P.G.Assistant is Master Degree in the concerned subject and B.Ed. When the incentive increment was available to all the Teachers working in the Primary/Middle/High Schools, no such scheme was there for the P.G.Assistants working in the Higher Secondary Schools. Therefore, the Association made representation to the Government, and the Government also issued orders enabling the P.G. Assistant also to get incentive increment on acquisiton of higher qualification and orders were issued in G.O.Ms.No.747, Finance Department, dated 18.08.1996. In respect of other teachers they were enabled to get two sets of incentive increments whereas in the case of P.G. Assistants orders were issued only for M.Ed.qualification alone. Thereafter they made representation that they are also having higher qualification of M.Phil/Ph.D.,and P.G.Diploma in Teaching English and the same may be considered for sanction of incentive increment. The Govenment issued G.O.Ms.No.1170, Education Department, dated 20.12.1993 enabling the P.G.Assistants to get another set of incentive increment for acquisition of higher qualification like M.Phil.,/Ph.D.,/P.G.Diploma in Teaching English. In the said G.O., the Government imposed a clause whereby it is stated that the persons who possessed the above higher qualification as on 1.3.1993 alone are entitled and the concession will not be extended in future. The petitioner has already been given one set of increment for M.Ed.,qualification and the petitioner got M.Phil.qualfication on 20.12.1993 (i.e) the cut off date fixed by the government in the said impugned order. The Government has fixed the cut off date as 01.03.1993. The fixation of cut off date is perse arbitrary, vitiated by errors of law, apparent on the face of the record and is liable to be set aside.

3. Heard learned counsel for the parties.

4. Learned counsel appearing for the petitioner submitted that the respondent has failed to take into account that the Secondary Grade Teachers' minimum required qualification is Secondary Grade Teacher Certificate or Diploma in Teacher Education. While accepting the policy, to extend the benefit to all the teachers there is no justification in introducing a cut off date as on 01.03.1993 holding that persons who possess the qualification as on 01.03.1993 are eligible and others are not eligible. Paragraph 3 of the impugned G.O.reads as follows:

"3. The Government accept the requests of the Director of School Education and issue the following orders:

(i) The Post Graduate Teachers/ who possess higher qualification like M.Phil/Ph.D/P.G.Diploma in Teaching of English shall be granted one incentive increments (ie) two advance increments.

(ii) This incentive increment shall be given only to those who possess the said higher qualifications as on 1.3.1993, and this concession will not be extended in future."

The writ petitioner obtained M.Phil.,in December, 1993. By this impugned G.O., the petitioner is not benefitted. This restricts the benefit for only

to those who possess the said higher qualifications as on 1.3.1993, and this concession will not be extended in future. Challenging the said G.O.,learned counsel for the petitioner submitted that there is no reason given in the G.O. as to why the date is fixed as 01.03.1993. In the absence of any reason for fixing the cut off date as 01.03.1993, the G.O.itself is arbitrary and it is violative of Article 14 of the Constitution.

5. In support of his contention, learned counel appearing for the petitioner relied on the decision of the Supreme Court in M.C. Dhingra v. Union of India (JT 1996 (2) S.C. 463) wherein the Supreme Court, in a case of computation of pensionary benefit, has held as follows:

"It is seen that though the appellant had retired on February 1, 19 73, since the question of tagging the previous service rendered in the State Government on temporary basis and the similar cases are pending, the Government had taken a decison on March 31, 1982 to tag the previous service for computation of the pension. Learned counsel appearing for the respondents contended that clause 4 of the abovesaid Circular is one of the conditions which prescribes that it would be applicable to the Government servants who retired from that date, namely, March 31, 1982. Since the appellant had retired on February 1, 19 73, he is not eligible. We find no force in the contention. All the persons who rendered temporary service prior to their joining the Government of India Service have been given the benefit of fixation of the pension payable by tagging the temporary service. The cut off date is arbitrary violating Article 14 of the Constitution of India. Having grouped all the similar circumstancesd employees, fixing the cut off date and giving benefit to those who retired thereafter is obviously arbitrary. ... On the facts and circutances, we find that the restriction imposed in clause 4 of the Circular is violative of Article 14. It is, therefore, unconstitutional. However, the appellant will be entitld to the pro rata pension from March 1982."

6. There is no counter-affidavit on behalf of the respondents and from the perusal of the G.O., it does not give any rason as to why 01.03.1993 has been fixed as cut off date. Hence, following the decision of the Supreme Court referred to above, which has followed, earlier decisions, the fixing up of the cut off date as 01.03.1993 appears to be arbitrary and therefore violatie of Article 14.

In the result, the writ petition is allowed. The words "as on 01.0 3.1993" in paragraph 3(ii) in G.O.Ms.No.1170 Education Department dted 20.12.1993 is struck off as unconstitutional. No cost.

Index :Yes
Internet :Yes

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